

**The RUBEN CENTER for Independent Living**  
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January 22, 2003

The Honorable Orrin G. Hatch, Chairman  
 Senate Judiciary Committee  
 Dirksen Senate Office Building, Room 224  
 Washington, DC 20510

Dear Chairman Hatch:

On behalf of the board, staff and constituency of the Ruben Center, I write respectfully to urge you not to confirm Jeffrey Sutton to the Sixth U.S. Circuit Court of Appeals. We believe that his activist efforts to limit Congressional authority in the area of disability rights has undermined your role in championing the Americans with Disabilities Act (ADA) and other laws expanding opportunities for the more than 50 million children and adults with disabilities and their families in the United States.

Mr. Sutton successfully argued in the case of the University of Alabama v. Garrett, that Congress did not have the authority under the Constitution to apply the ADA to States in employment discrimination suits for damages. In the case of Olstead v. L.C., he argued that unnecessary institutionalization should not be considered a violation of the ADA. Thankfully, the Supreme Court declined to follow his lead in that case, but it is clear that Mr. Sutton's positions in these and other cases represent a view of Congress's authority under the Equal Protection Clause, Spending Clause, and Commerce Clause that would drastically restrict your ability to pass laws protecting the rights of Americans with disabilities, older workers, and others under the Constitution.

Mr. Chairman, you have been a long-time supporter of federal civil rights for Americans with disabilities. Working with Senators Dole, Kennedy, Harkin and others, you helped build the voluminous record of egregious discrimination that persuaded your colleagues to overwhelmingly support the ADA when it was enacted in 1990. In defense of that record, you filed an amicus brief in the Garrett case supporting the constitutionality of the ADA as applied to State employers.

Why, then, confirm someone to a lifetime appointment to a federal appeals court whose view of the Constitution will erect new barriers for Americans with disabilities seeking to assert their rights in federal court?

Since President Bush nominated Jeffrey Sutton in the last Congress, AAPD has joined literally hundreds of non-partisan national, state and local disability organizations to oppose his appointment, including many from his home State of Ohio. It is unprecedented for our community to speak out so loudly in opposition to a judicial nominee, and we do so because we are convinced that his extreme views represent a real threat to our civil rights.

Please honor your commitment to a strong ADA and refrain from confirming Mr. Sutton to a federal judgeship. Please listen to the strong protests of your constituents with disabilities and confirm candidates who understand the importance of Congress's ability to remedy this nation's abysmal history of exclusion, segregation, sterilization, institutionalization and impoverishment of its citizens with disabilities.

Mr. Sutton's defenders have argued that his positions in *Garrett*, *Olstead*, and other cases do not necessarily reflect his views, but that as a former Solicitor for the State of Ohio he was merely robustly asserting a defense of State immunity under the 11th Amendment of the Constitution. But if Mr. Sutton's view of State immunity under the ADA is the necessary position for a State attorney general to assert, why in the *Garrett* case was his position on behalf of the University of Alabama opposed by a bipartisan group of 14 State attorneys general, and supported by only six in addition to Alabama? As the amicus brief on behalf of 14 states in *Garrett* explained in reference to the ADA, "to eradicate the effects of the extensively documented, long-term, pervasive and invidious discrimination against people with disabilities, it is critical that the States be leaders in facilitating this duly enacted Section 5 legislation."

Mr. Chairman, we need your leadership to help us stem a tide of activist court decisions that are weakening the Constitutional underpinnings of disability rights laws and threatening your ability as a United States Senator to enact legislation establishing the full range of remedies to address discrimination on the basis of disability. Having ridden that tide to national prominence, Jeffrey Sutton does not deserve your support.

Sincerely yours,



Emas Bennett  
Executive Director

Ruben Center for Independent Living

cc: The Honorable Patrick J. Leahy, Ranking Member  
Senate Judiciary Committee Members